



Billing Code: 4520.43-P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 56 and 57

[Docket No. MSHA-2014-0030]

RIN 1219-AB92

Examinations of Working Places in Metal and Nonmetal Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Technical amendments; conforming to Court order.

SUMMARY: The Mine Safety and Health Administration (MSHA) is reinstating the regulatory provisions for examinations of working places in metal and nonmetal mines published on January 23, 2017. The U.S. Court of Appeals for the District of Columbia Circuit issued an order on June 11, 2019, and a mandate on August 23, 2019, requiring this action.

DATES: Effective [insert date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Sheila A. McConnell, Director, Office of Standards, Regulations, and Variances, MSHA, at mcconnell.sheila.a@dol.gov (email), 202-693-9440 (voice),

or 202-693-9441 (fax). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: On January 23, 2017, MSHA published a final rule, Examinations of Working Places in Metal and Nonmetal Mines (MNM), amending the Agency's standards for the examinations of working places in MNM mines, 30 CFR 56.18002 and 57.18002 (82 FR 7680). The final rule required that an examination of the working place be conducted at least once each shift before miners begin working in that place, that operators notify miners in the affected areas of any conditions found that may adversely affect their safety or health, that operators promptly initiate corrective actions, and that a record be made of the examination. The final rule required the examination record to include: the name of the person conducting the examination, the date of the examination, the location of all areas examined, a description of each condition found that may adversely affect the safety or health of miners, and the date of corrective action. In addition, the final rule required the operator to make the examination record available to the authorized representative of the Secretary and miners' representatives and provide a copy upon request.

On September 12, 2017, MSHA reopened the record and proposed limited changes addressing two issues: (1) The

timing of working place examinations; and (2) which adverse conditions and corrective actions must be included in the working place examinations record (82 FR 42757).

Specifically, MSHA proposed amending the introductory text of §§ 56.18002(a) and 57.18002(a) to require that an examination of a working place be conducted before work begins or as miners begin work in that place. The Agency also proposed amending paragraphs (b) and (c) of §§ 56.18002 and 57.18002 to require that the examination record include descriptions of only those adverse conditions that are not corrected promptly and the dates of their corrective actions. After receiving comments, MSHA published a final rule on April 9, 2018 ("April 2018 rule") (83 FR 15055) revising the introductory text of paragraph (a) of §§ 56.18002 and 57.18002, and paragraphs (b) and (c) of §§ 56.18002 and 57.18002.

On May 9, 2018, the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO-CLC and United Mine Workers of America International Union petitioned the U.S. Court of Appeals for the District of Columbia Circuit to review the April 2018 rule. The petitioners argued that the April 2018 rule violated the no-less protection requirement under sec. 101(a)(9) of the Federal Mine Safety

and Health Act of 1977, 30 U.S.C. 811(a)(9), and also was “arbitrary and capricious” under the Administrative Procedure Act. See 5 U.S.C. 706.

On June 11, 2019, the Court vacated the April 2018 final rule and ordered the January 23, 2017 final rule reinstated. *United Steel Workers, et al. v. MSHA, D.C. Cir. No. 18-1116*. On July 25, 2019, the Secretary petitioned the Court for a panel rehearing. The Court denied the petition for rehearing on August 14, 2019. The Court issued a mandate on August 23, 2019. Accordingly, in this document, MSHA recognizes the legal effect of the court order and revises §§ 56.18002 and 57.18002 to reinstate the regulatory provisions established by the January 23, 2017 final rule.

The rule is effective immediately; however, MSHA will use the first 90 days to fully implement the rule. During this time, MSHA will hold informational stakeholder meetings and provide in-person compliance and technical assistance to ensure that miners and mine operators understand the rule’s requirements. The dates, times, locations, and other information will be announced in a separate document in the *Federal Register*, and will be posted on www.msha.gov. Compliance assistance materials

that include the MSHA's inspector training materials will be available on the Agency's web site at www.msha.gov.

MSHA determined that the final rule published on January 23, 2017, will result in \$34.5 million in annual costs for the MNM industry (82 FR 7680, 7682). At that time, the Agency estimated that the total undiscounted costs of the final rule over 10 years will be \$345.1 million; at a 3 percent discount rate, \$294.4 million; and at a 7 percent discount rate, \$242.4 million (Id.). Reinstating the provisions of this final rule will eliminate the \$27.6 million savings estimated for the April 2018 rule (83 FR 15055, 15056).

MSHA determined that the January 23, 2017 final rule would not have an annual effect of \$100 million or more on the economy and, therefore, is not an economically significant regulatory action pursuant to section 3(f) of Executive Order (E.O.) 12866 (82 FR 7680, 7688). The analyses relating to overall cost, feasibility, Regulatory Flexibility Analysis, and Paperwork Reduction Act of 1995 costs of the final rule remain unchanged since its publication on January 23, 2017. Based on the requirements of E.O. 13771, the \$27.6 million annual savings attributed to fiscal year 2018 is now a regulatory cost for the current fiscal year.

List of Subjects in 30 CFR Parts 56 and 57

Metals, Mine safety and health, Reporting and recordkeeping requirements.

David G. Zatezalo,

Assistant Secretary of Labor for

Mine Safety and Health Administration

For the reasons set out in the preamble, and under the authority of the Federal Mine Safety and Health Act of 1977, as amended by the Mine Improvement and New Emergency Response Act of 2006, MSHA is amending chapter I of title 30 of the Code of Federal Regulations as follows:

PART 56—SAFETY AND HEALTH STANDARDS--SURFACE METAL AND NONMETAL MINES

1. The authority citation for part 56 continues to read as follows:

AUTHORITY: 30 U.S.C. 811.

2. Revise § 56.18002 to read as follows:

§ 56.18002 Examination of working places.

(a) A competent person designated by the operator shall examine each working place at least once each shift before

miners begin work in that place, for conditions that may adversely affect safety or health.

(1) The operator shall promptly notify miners in any affected areas of any conditions found that may adversely affect safety or health and promptly initiate appropriate action to correct such conditions.

(2) Conditions noted by the person conducting the examination that may present an imminent danger shall be brought to the immediate attention of the operator who shall withdraw all persons from the area affected (except persons referred to in section 104(c) of the Federal Mine Safety and Health Act of 1977) until the danger is abated.

(b) A record of each examination shall be made before the end of the shift for which the examination was conducted. The record shall contain the name of the person conducting the examination; date of the examination; location of all areas examined; and description of each condition found that may adversely affect the safety or health of miners.

(c) When a condition that may adversely affect safety or health is corrected, the examination record shall include, or be supplemented to include, the date of the corrective action.

(d) The operator shall maintain the examination records for at least one year, make the records available for

inspection by authorized representatives of the Secretary and the representatives of miners, and provide these representatives a copy on request.

PART 57—SAFETY AND HEALTH STANDARDS--UNDERGROUND METAL AND NONMETAL MINES

3. The authority citation for part 57 continues to read as follows:

AUTHORITY: 30 U.S.C. 811.

4. Revise § 57.18002 to read as follows:

§ 57.18002 Examination of working places.

(a) A competent person designated by the operator shall examine each working place at least once each shift before miners begin work in that place, for conditions that may adversely affect safety or health.

(1) The operator shall promptly notify miners in any affected areas of any conditions found that may adversely affect safety or health and promptly initiate appropriate action to correct such conditions.

(2) Conditions noted by the person conducting the examination that may present an imminent danger shall be brought to the immediate attention of the operator who shall withdraw all persons from the area affected (except persons referred to in section 104(c) of the Federal Mine Safety and Health Act of 1977) until the danger is abated.

(b) A record of each examination shall be made before the end of the shift for which the examination was conducted. The record shall contain the name of the person conducting the examination; date of the examination; location of all areas examined; and description of each condition found that may adversely affect the safety or health of miners.

(c) When a condition that may adversely affect safety or health is corrected, the examination record shall include, or be supplemented to include, the date of the corrective action.

(d) The operator shall maintain the examination records for at least one year, make the records available for inspection by authorized representatives of the Secretary and the representatives of miners, and provide these representatives a copy on request.

[FR Doc. 2019-20852 Filed: 9/27/2019 8:45 am; Publication Date: 9/30/2019]